

### REMARKS/ARGUMENTS:

Claims 1, 3 – 10, 16, 18, 19, 30 – 63, and 86 – 98 have been canceled.

Claims 2, 11, 20 – 23, 80, 81 and 83 have been amended.

Claim 2 has been amended to incorporate all members of the Markush group of claim 10 except for triticonazole. Claim 10 has been canceled.

Claims 11 and 20 – 23 have been amended to correct dependency.

Claim 11 has been further amended by deleting the term “triticonazole”.

Claims 80, 81 and 83 have been amended by correcting the spelling of the term “inidazolinone”, and by replacing the terms “STS system” with “sulfonylurea”.

New claims 100 – 141 have been added. All of the new claims find support in the claims as previously filed. New claim 100 comprises the subject matter of original claim 2 and original claim 8. All claims that depend from new claim 100 find support in the claims as previously filed.

Claims 17 and 20 – 22 stand withdrawn.

Claims 2, 11 – 15, 17, 20 – 29, 64 – 85 and 99 – 141 are in the case.

No new matter has been added.

Withdrawal of the allowability of claims 2, 8 – 10, 20 – 29, 64 – 67, 71, 73, 79, 80, 84, 85 and 99 in view of the newly discovered reference EP 0 622 020 A1 to Gatineau *et al.*

The withdrawal of the allowability of claims 2, 8 – 10, 20 – 29, 64 – 67, 71, 73, 79, 80, 84, 85 and 99 in view of the newly discovered reference EP 0 622 020 A1 to Gatineau *et al.* is noted. It is believed that the present amendment of the claims, as discussed below, overcomes this new ground of rejection.

Rejection of claims 2, 9 – 11, 16, 24 – 29 and 64 – 70 under 35 USC §102(a) and (b) as anticipated by EP 0622 020 to Gatineau *et al.*

It is respectfully requested that the rejection of claims 2, 9 – 11, 16, 24 – 29 and 64 – 70 under 35 USC §102(a) and (b) as anticipated by EP 0 622 020 to Gatineau *et al.* be reconsidered in view of the present amendments to the claims and upon consideration of the reasons below and be withdrawn. An English translation of the Gatineau *et al.* document has been obtained and this translation is attached with an

Information Disclosure Statement to this Response. Since this reference was listed in a form PTO-892 in the recent Office Action, the Applicant believes that a fee is not due for the entrance of the English translation into the file and for its consideration by the Examiner. However, if such a fee is due, the signature of the Applicant's attorney below serves as authorization to withdraw such a fee from Deposit Account No. 50-2548.

The Office has cited EP 0 622 020 as teaching the utility of triticonazole for improving the health of plants by applying the agent to the seed of plants including corn, barley, rye, rice and soybean at rates from 0.2 – 1000 g/100 kg of seed.

Claim 2 has been amended by limiting the triazole fungicide to the list of triazoles described in claim 10, except for triticonazole, which is not included. Comparison of the structures of the triazole compounds that remain in the list that is incorporated into claim 2 with the structure that is described in the Gatineau *et al.* publication shows that the Gatineau *et al.* structure does not read on any of the triazoles in the list. Accordingly, the Gatineau *et al.* publication cannot anticipate the subject matter of claim 1, or any claim that depends therefrom, and it is respectfully requested that the present ground of rejection be reconsidered and be withdrawn.

Furthermore, it is believed that the Gatineau *et al.* publication provides no guidance at all related to the requirement that the treated propagation material must be planted and/or the treated plant must be grown in the absence of pest pressure by fungal plant pathogens against which the triazole, or strobilurin type fungicide is known to be active, as is required in all claims of the application. Accordingly, it is believed that without such guidance, a person of ordinary skill in the pertinent art would have no suggestion or motivation to modify the teachings of Gatineau *et al.* to arrive at the method that is claimed in the present application.

Allowability of claims 8, 12 – 17, 20 – 23, 71 – 85 and 99 if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

It is believed that the amendments to claim 2, from which the presently rejected claims ultimately depend, resolves the issues regarding the allowability of each of the claims, and their allowance is respectfully requested.

Allowability of new claims 100 – 141.

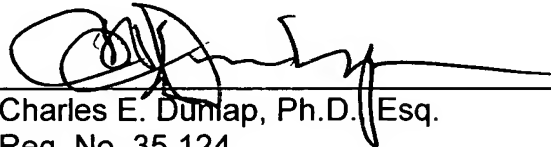
New claim 100 comprises the subject matter of claim 2 and claim 8, which has been indicated as being allowable over the cited art if re-written. Claim 100 provides this action and, therefore, should now be allowable. Claims 101 – 141, which depend ultimately from claim 100, should also be allowable as depending from an allowable claim.

Request for reconsideration:

It is respectfully requested that the claims be reconsidered in view of the amendments described above and be found to be allowable. If one or more of the claims are found to not be allowable, a telephone call to the undersigned would be appreciated in order to resolve any remaining issues.

Respectfully submitted,

**Nelson Mullins Riley & Scarborough LLP**



Charles E. Dunlap, Ph.D. Esq.  
Reg. No. 35,124

January 13, 2006

Dated:

1320 Main Street, 17<sup>th</sup> Floor  
Columbia, SC 29201  
(864) 250-2238 Telephone  
(803) 255-9831 Facsimile